

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

FRANK HYMAN,	:	CIVIL ACTION
Plaintiff	:	
	:	
v.	:	NO. 10-499
	:	
COMMISSIONER LOUIS GIORLA,	:	
et al,	:	
Defendants	:	

ORDER

AND NOW, this 28th day of April, 2011, upon careful and independent consideration of plaintiff's complaint, and after review of the Report and Recommendation of United States Magistrate Judge Linda K. Caracappa, IT IS HEREBY ORDERED that:

1. The Report and Recommendation is APPROVED and ADOPTED in part as follows:
 - a. Plaintiff's denial of access to courts claim (Claim No. 1) is **DISMISSED**.
 - b. Plaintiff's individual and official capacity claims against Lieutenant Anderson and Corrections officers Dwayne Corley, Ryan Hoover, Rob Bubas, and Marshall are **DISMISSED**.
 - c. Plaintiff's Eighth Amendment claims against Warden Clyde Gainey, Deputy Warden Gerald May, and Captain Harmond in their official capacities for prospective injunctive relief shall remain.¹

¹ While the Eleventh Amendment bars suits for money damages against state officials acting in their official capacities, it does not proscribe actions for injunctive relief against such defendants. See Sarteschi v. Burlein, 508 F.2d 110, 113 (3d Cir.1975); Koslow v. Commonwealth of Pa., 302 F.3d 161, 178 (3d Cir. 2002) ("The Eleventh Amendment has not been interpreted to bar a plaintiff's ability to seek prospective relief against state officials for violations of federal law."). As set forth in Judge Caracappa's Report and Recommendation,

- d. Plaintiff's Eighth Amendment claims against Warden Clyde Gainey, Deputy Warden Gerald May, and Captain Harmond in their individual capacities for monetary damages shall remain.
2. Discovery on plaintiff's remaining claims shall be completed no later than **July 29, 2011**.
3. Any dispositive motions pursuant to Federal Rule of Civil Procedure 56 are to be filed no later than **September 16, 2011**.

BY THE COURT:

/s/ Lawrence F. Stengel
LAWRENCE F. STENGEL, J.

plaintiff has sufficiently alleged that defendants Gainey, May, and Harmond used excessive force against him in violation of the Eighth Amendment. Therefore, his personal capacity claims against these individuals seeking damages, and his official capacity claims against these individuals seeking injunctive relief, shall not be dismissed.